



# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**APPLYING THE ISRAELI PRACTICE OF  
RECONSTRUCTION FOLLOWING A TERRORIST  
ATTACK AS A MODEL FOR CITIES IN THE UNITED  
STATES**

by

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March 2013

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A TERRORIST ATTACK AS A MODEL FOR CITIES IN THE UNITED STATES**

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## **ABSTRACT**

A component of the Israeli counter-terrorism policy includes a strategic choreographed response to restore and reconstruct physical damage caused by a terrorist attack with the goal of removing all markings of the attack in an expeditious timeframe. The investment of reconstructing a damaged scene is intended to yield increased resiliency for the impacted population and devalue the fear intended to be delivered with the attack. The critical element of the Israeli model is that the government accepts that attacks will occur and has developed a response for such attacks beyond aiding the injured and processing a crime scene.

Application of the Israeli model to the United States merits review, as there is a strong likelihood that future terrorist attacks will occur on domestic soil in the United States and a best practice may be extrapolated from the Israeli model. The intended restoration of normalcy that follows Israel's reconstruction efforts is designed to mitigate the psychological impact of a terrorist attack and serve as a palm to the damaged psyche of an impacted population. The State of Israel recognizes that the element of fear is a coconspirator in terror attacks and has developed a response to it.

The subject of this thesis will address the specific response of reconstructing a damaged scene following a terrorist attack.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

CCC	Command, Control & Coordination
DHS	Department of Homeland Security
FCDA	Federal Civil Defense Administration
FEMA	Federal Emergency Management Agency
INP	Israeli National Police
MDA	Magen David Adom
NIMS	National Incident Management System
NGO	Non-Governmental Agency
NYPD	New York Police Department
OCD	Office of Civil Defense
PTSD	Post Traumatic Syndrome Disorder
QHSR	Quadrennial Homeland Security Report
WTC	World Trade Center

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My parents provided the foundation upon which all else was built. The body of work reflected in this thesis belongs to them.

# **I. INTRODUCTION**

## **A. PROBLEM STATEMENT**

The United States employs any number of counter-terrorism strategies, but a narrow few that actually begin with the assumption that a successful attack will have occurred. Those that do begin at this stage are limitedly constructed to satisfy the mechanical requirements of response and recovery (FEMA, 2012). Counter-terrorism efforts at their inception are designed and viewed with the expectation that those same efforts will preclude future terrorist events from occurring. Retaliatory actions, whether targeted killings or wholesale attacks against state sponsored terrorism, are predictable reactive responses to a terrorist attack. Additionally, after action reports that follow such attacks are designed to identify gaps and vulnerabilities that may have led to the attack and often follow with the hardening of targets or policy changes that inhibit access and resources to would be terrorists, relative to future attacks. However, scant preparatory work is undertaken to minimize fear following a terrorist attack because such action might be inferred as a tacit surrender to terrorism by acknowledging that it cannot be prevented. Opportunities to mitigate fear following a successful terrorist act and influence future attacks may and should be employed by law enforcement and related governmental agencies. The State of Israel employs a post attack model that merits further review as a possible exemplar for the United States.

Terrorist acts capture the attention of governments and their populations with actions that seldom require more than a limited imagination, a fervent passion of belief and access to resources that may be obtained with minimal funding. Education in bomb building, identifying the engineering weaknesses in a target, lapses in security, the logistical coordinates of a target and the most opportune times to attack may be accessed from open source information with a few mouse clicks across the Internet. In instances where there exists some network or organization to terrorist actions, the resources, support systems and actors themselves are seldom centralized. Consequently, proactive responses to terrorist acts and actors cannot be summarily satisfied by targeting singular

locations, but require a multifaceted approach to address the many tentacles that comprise a terrorist network. This research addresses a single spoke in the counter-terrorism wheel.

Although not exclusively, counter-terrorism efforts by the United States are disproportionately directed at nondomestic threats. Homeland security defense issues in the United States are dominated by overseas offensive efforts. Aside from the events of 9/11, the distance that exists between domestic security and terrorist attacks would appear to dull the interest of policy makers in the United States to forge a domestic policy in response to a successful terrorist attack, akin to the Israeli model. Crafting such a policy would require a political and practical recognition that such an attack is likely to occur despite best efforts to prevent it. Absent of crafting such a policy, crisis management remains the sole tool in the United States toolbox to respond to a successful attack. Although the National Incident Management System provides an effective framework to coordinate response to an event it is not designed to support resiliency (NIMS, 2008). Consequently, a population unprepared to respond to the emotional toll of an attack and further handicapped by a government that fails to employ a strategy to address the emotional scars inflicted upon a population's psyche cannot be expected to heal, but rather, must endure the chronic emotional consequences of terrorism. As a result, the impact of terrorist acts may last well beyond the sound of the initial bomb blast. Terrorists are figuratively awarded an additional victory lap with the continued emotional damage inflicted upon the targeted population.

Israel does not stand alone as a modern state government that has been victimized by terrorism. Terrorism directly or indirectly has touched scores of nations in modern time. The history of modern day foreign terrorism directed against the United States has been largely directed far from domestic soil. Suicide bombings have taken the lives of Americans in Iraq, Saudi Arabia, and Afghanistan. Many more American lives have been lost to improvised explosive devices in Iraq and Afghanistan. Although in many instances these attacks against the United States were during military conflicts or times of foreign occupation, they were attacks of unconventional warfare and not limited to combatants. Terrorists have kidnapped Americans, although none have occurred from domestic soil.



Since 1993, foreign attacks upon American sovereignty other than the attacks of September 11, and the earlier attack on the World Trade Center in 1993, have been directed at U.S. embassies in Peru, Moscow, Lebanon, Kenya, Tanzania, India, Pakistan, Indonesia, Uzbekistan, Saudi Arabia, Syria, Greece, Yemen, Turkey, Egypt and Libya, as well as the attack upon the USS Cole in Yemen in 2000 (U.S. State, 2012). A limited number of individual attacks conducted both by foreign nationals and U.S. citizens have occurred within the United States, most notably the Oklahoma City bombing in 1995. However, distance and time have added significant degrees of separation to the terrorist experience for most Americans. As a result, a gap in preparedness exists in relation to responding to a successful attack and protecting the resiliency of the population impacted by such an attack.

The terror attack of the Alfred P. Murrah building in Oklahoma City, OK in 1995 serves as an example of domestic terrorism in the United States where the programmatic response did not consider resiliency as a factor to be addressed. This was evident in that the response to the initial incident extended into three weeks time (Cooke, 2009). In the 1995 incident, any consideration for resiliency was likely far from the minds of those responsible for preparedness plans. In the 1993 and 2011 attacks on the World Trade Center, similar responses followed with notable absences to address resiliency. Terrorism occurring on domestic soil in the United States is the exception rather than the rule and certainly not on par with the experience of Middle East states. Significant events provide an opportunity from which best practices may emerge gleaned from hindsight. However, opportunities to enhance U.S. preparedness with regard to resiliency have fallen short.

The Israeli government's practice of expeditiously reconstructing sites damaged by a terrorist attack is not an incidental outcome of their overall response to a scene but a strategic component of their counter-terrorism strategy. The ability to reconstruct a damaged scene in a timely manner is also a function of scale. The collapse of the World Trade Center (WTC) towers in 2001 serves as an obvious example. The WTC attacks were both suicide and rocket propelled attacks. Although the reconstruction of a scene of that magnitude and its interrelationship with other infrastructure, i.e., rail lines, slurry

walls etc., would not allow for a reconstruction within hours, an arguable point may be made as to what then constitutes timeliness in that instance. The fact that construction/reconstruction continues on the WTC site more than a decade following the suicide attacks would suggest that even factoring scale into the equation, timely reconstruction of the site has not followed. The time it has taken to reconstruct the WTC site is a product of political, contractual, legal influences and/or conflicts, which have impeded a rapid recovery. The failure to have achieved rapid recovery and repair of the site is further compounded by the absence of a national policy in the United States mandating same.

This thesis will focus upon examining the design behind the Israeli response to domestic bombing attacks, in so far as it may serve to sustain and/or restore resiliency for the effected population. Specifically, the research addresses the Israeli response following a successful terrorist attack on domestic soil. Although Israeli preparedness and response to supporting resiliency for its population is multifaceted and is implemented at pre and post event stages, this research will focus upon the singular component of reconstructing scenes damaged by a terrorist attack in an expeditious manner. Additionally, further exploratory examination will follow to ascertain if a similar, although not identical program may be constructed within the United States. Examining past practices in Israel and how they might be employed within the framework of United States law will constitute the thesis research. Optimally and conditional upon the research findings, a best practice may emerge that has implications for local municipalities across the United States.

## **B. RESEARCH QUESTIONS**

1. What is the intent of the Israeli response to reconstructing a scene damaged in a terrorist attack, in so far as sustaining resiliency for the effected population?
2. Can a similar, although not identical program, be framed within the United States for attacks occurring within the United States?
3. If such a model were employed in the United States, what mechanisms would be required to coordinate federal, state and local resources?

4. Additionally, will an examination of how fear impacts the human psyche serve as a means to validate or discredit the merits of Israel's efforts to reconstitute a damaged bombing scene?

### **C. METHODOLOGY**

A single case study will be utilized to answer how the resiliency of a population impacted by domestic terrorism may be strengthened by reconstructing physical property damaged in a terrorist attack, and if a similar model may be employed in the United States. The model employed by Israel to reconstitute a scene impacted by a terrorist attack will serve as the case study. Neither terrorist attacks, nor suicide bombings, nor the longevity of such attacks across a significant span of time is unique to Israel. In Northern Ireland, terrorist acts have been documented across centuries culminating with "the Troubles" in the twentieth century (Wichert, 1991). Modern day suicide bombing attacks as a terrorist tool have been a successful delivery method for bombings in Israel. However, the earliest recording of such modern day terrorist suicide bombings occurred in Sri Lanka, which over time has incurred a greater number of such incidents than any other nation (Pape, 2003). However, the research has not yielded any instances in Northern Ireland, Sri Lanka or any other nation where an effort has been undertaken to reconstruct buildings and infrastructures following a terrorist attack, with the purpose and speed accomplished in Israel. The Israeli model will be utilized as it, singularly among others, addresses resiliency as a component factor in its post bombing response.

Recognizing that hard data is not likely available, empirical study may be required to quantify the validity of any research findings. The value of the Israeli model, which is multi-tiered to include aiding the injured, securing the scene for safety, the collection of evidence and washing away the evidence of an attack is not one that may not be readily measured with metrics. Rather an examination of how fear impacts the human psyche from a psychological study and how that has been applied by other researchers to victims of domestic terror may serve to validate or discredit the merits of Israel's efforts to reconstitute a scene damaged in a bombing attack.

The challenge in examining the Israeli model is that aside from collecting accounts of the practice, obtaining actual Israeli written policies and procedures may be problematic. However, if the examination is to study the mitigation of fear, the theory supporting the practice may be examined to conduct the research and yield findings. The research too may be expanded to include the many elements that comprise a comprehensive response to a domestic terrorist attack, not just limited to the “wash-up” of an impacted scene or the “swoop and scoop” of injured parties on a scene. Israel’s employment of nongovernmental agencies, i.e., ZAKA, as well as its strategy in deploying emergency medical personnel to a scene and the manner in which victims are triaged are also integrated into the research. Some of these tangential elements provide an understanding in how the acceleration in the restoration of normalcy follows an attack.

#### **D. SIGNIFICANCE OF RESEARCH**

The findings of the research provide a value basis to the Israeli model of reconstruction by assessing the impact of fear and its legacy in the form of property damaged in a terrorist attack. Recognizing that the divergent cultural and legal practices of the U.S. and Israel would alone preclude an identical replication of the Israeli model, the research addresses what elements may be replicable. However the kinship between the United States and Israel as sister western democracies, both equally challenged by the inability to unilaterally impose dictatorial demands upon its populace, allows for the Israeli practice to serve as a viable model for the U.S..

## **II. LITERATURE REVIEW**

The literature review pursued three avenues to answer the following questions that framed the research. What is the rationale for Israel reconstructing a damaged scene following a terrorist attack? Is there a means to validate the practice's worth? Could a similar model be implemented in the United States? Validation of the Israeli model was sought first through existing published studies that supported findings with metrics. Research on a body of literature on the subject of fear and negativity bias followed, which provided a basis to support the Israeli model. This examination discovered that the rationale and validation for the model was best articulated and argued through an understanding of the psychology of fear rather than metrics alone, which were derived from an academic study of fear. The literature review touched upon the pragmatic steps required to replicate such a policy by examining similarly aligned policies and practices by various U.S. government agencies, primarily published by the Federal Emergency Management Agency (FEMA) and the Department of Homeland Security (DHS). A review of existing published laws in the United States was also conducted for applicability purposes to ascertain if there was legal standing to implement a sister policy in the United States.

### **A. THE ISRAELI EXPERIENCE**

The scope of the literature review includes books, scholarly journal reports, and documented witness accounts that addressed the immediate aftermath of terrorist attacks in Israel. The Israeli model was identified as the archetype for replication due to the extensive number of terrorist acts that Israel has been exposed and the experience gleaned from such attacks (Kulick, 2008). Suicide bombings in particular were examined to further validate Israel's selection for this research and study as attacks of this kind are more likely to result in reconstruction efforts, as suicide bombers favor visible public places to target (Crenshaw, 2007) (Atran, 2006) (Hoffman, 2004). The specific act of expeditiously reconstructing damaged real property was discovered in the literature review to be a practice unique to Israeli (Perliger, 2006) (Curtius, 2001).

The literature review reflects that the intent of reconstructing damaged property is geared towards the restoration of normalcy, which goes to the heart of this research. Ideally, incorporation or review of written standard operational procedures employed by Israel for that purpose would be persuasive in any arguments forged by this study. A limited number of journal articles were reviewed that spoke to this subject directly (Weisburd, 2009) (Perliger, 2006). The challenge to collecting specific information about the mechanics of the practice, aside from the collected observations of witnesses, is that public exposure of these policies and practices may be detrimental to the actual practice. However, the actions taken following such events are not conducted surreptitiously, but are by design purposely calculated to attract public attention to demonstrate a collective resolve in the aftermath of an attack. Research documents did, however, extrapolate the broader process, its goals and aims and interpreted the subjective findings of its success. The absence of literature that addresses the mechanics of the Israeli response is inconsequential to this study, as the relevancy of the research is directed at the rationale and validation for the response.

## **B. THE PSYCHOLOGY OF FEAR**

The psychology of fear yielded voluminous information in the form of books, studies and professional journal articles. However, not all of those studies were applicable to the research being pursued herein. Instead, the research was limited to fear, as it relates to those impacted by a terrorist attack. Studies were reviewed that touched upon persons victimized by terrorist induced fear alone (Borell, 2005). Some of these studies applied metrics to assess the amount of fear instilled upon a population following a bombing attack (Prieto-Rodriguez, 2009) (Kaplan, 2005) (Peleg, 2001). Scientific studies that addressed Post Traumatic Stress Disorder and the deconstruction of fear were also reviewed and may be applied as a rationale in support of the Israeli model. However, the metrics employed by these soft science studies do not necessarily add value to the research as a definitive finding but do underscore the criticality that fear plays in the calculus of terror.

Although the actions of the Israeli model require repairing what is tangible, the goal is clearly to protect and restore the intangible mental state of its population. “As terrorism is more a psychological phenomenon (in terms of creating fear across society) than a physical one (due to the comparatively small number of victims), reassuring the public and making it possible for them to go about their daily lives thus represents an important victory over terrorism” (Morag, 2011, p. 122). This sentiment is prevalent throughout the literature. The role of negativity bias as a rationale for rehabilitating a damaged scene was addressed in the literature review (Vaish, 2008). The findings provided relevance to the reconstruction model and buttressed the rationale of abating fear through physical rehabilitation of damaged property, as it relates to terrorism (Bongar, 2007).

Counter-terrorism efforts may reside outside of traditional defensive and offensive strategies. Mitigation of completed attacks should be pursued to serve as an additional counter-terrorism measure. Crisis management of an impacted scene should be foremost in such a mitigation strategy. Consequently, the literature review also examined the immediate actions that followed a successful attack. Several articles addressed the topic of crisis management as executed by Israel following an attack (Stein, 1997) (Ajzenstadt, 2008). They spoke to post incident actions that followed an attack, which provided the foundation for additional study. The literature addressed Israel’s multi-disciplinary model and defined various agencies both governmental and civilian that participate and respond to an incident (Perliger, 2005) (Kulick, 2008). Additional research about those agencies was pursued, including but not limited to the INP, ZAKA, Magen David Adom, and the Civil Guard to better grasp the Israeli comprehensive response to a bombing attack (Weisburd, 2009). This same literature was juxtaposed against literature about kindred agencies in the United States for the purpose of comparative study, i.e., the National Guard and FEMA. Published reports on these agencies were readily available through U.S. governmental publications. Comparative studies of Israeli and U.S. practices were encompassed within the literature review (Morag, 2011) (Cook, 2009). In the case of the U.S., extensive literature exists about operational tactics such as the hardening of targets, preemptive strikes against would be

terrorists and retaliatory efforts to dissuade future attacks, but the volume of literature diminishes when addressing defensive actions following a successful attack.

### **C. RESILIENCY**

The intended goal of the Israeli model is to buttress resiliency and move towards a restoration of normalcy in the daily life of an affected population. There was consistency across the literature reviewed that the actions following an explosion must address more than simply collecting evidence and rendering aid to the injured (Spilerman, 2009). Resiliency is the operative defense mechanism by which a population may protect itself against indefensible attacks (Zemishlany, 2012). “The emphasis in Israel is on coping as a behavior strategy for confronting mortal risk” (Spilerman, 2009, p. 176). The literature review identified the psychological logic that adds value to the Israeli practice of reconstruction, which culminates with an improved resiliency for a targeted population.

### **D. CRITIQUE AND INTERPRETATION OF PUBLISHED WORK**

Studies have employed mathematical computations to quantify the fear delivered with suicide attacks (Prieto-Rodriguez, 2009), measure normalization of stock markets following an attack (Peleg, 2001), and measure terror capacity (Kaplan, 2005). Although these studies do offer an assessment of the impact of fear, they remain problematic in that the factors applied to the researchers’ calculus are wholly subjective. There is no quantitative finding that suggests any of the factors employed are truly telling, the most telling, or telling at all, when trying to quantify fear. The particular swings to stock market fluctuations may be an outcome of fear or simply the caution of investors. Differentiating causation and correlation to an event is the challenge in assessing the application of these kinds of findings. Mathematical computations such as these may serve an academic purpose, but they challenge the reader to translate an assigned numerical value to the palpable emotion of fear that touches those affected first hand by terrorism.

The Israeli model, as outlined by the literature, is a defensive strategy (Weisburd, 2009). The defensive strategy requires adaptation to events and adoption of policies that



will facilitate that end. Although the existing research would suggest that there is organized functionality to the process, drawing from specific INP policies is not readily available to support the practice. Consequently, it cannot be fairly assessed if all established policies are being followed as constructed, or if by a process of natural selection best practices emerge. Critical examination of the successes and/or failures of management on such scenes was limited in the literature reviewed to a failure to coordinate ambulances dispatched from and to area hospitals (Perliger, 2006). A balanced examination of the Israeli model should be more comprehensive.

Confidence in the research findings of the literature related to the attacks against Israel is founded on more than two decades of data from which the Israeli experience is drawn (Hoffman, 2006). The research in this category is both rich and compelling (Pape, 2003) (Nunn, 2004). The data related to the number of attacks, the number of persons killed or injured, and the scope of physical damage is incontrovertible. Hoffman and Pape's statistics on the subject provide the foundation for further research. However, the data within the set of this literature does not capture the intangible impact of fear instilled upon victims of an attack. If the goal of the research is to validate the process of "reconstruction," a correlation to mitigating fear should follow. In the absence of a specific research study on this subject, and there does not appear to be one known to this writer, then the mitigation of fear must be applied with a broader brush. Earlier noted metrics are not sufficient alone to assess fear and its impact upon a population. However, regardless if an assigned metric may be applied to measure fear, an unlikely possibility, "...policy-makers in most democratic states have come to understand that, in order to deal with terror effectively, they must focus not only on offensive methods practiced by national institutions and organizations, but also on defensive aspects of the battle" (Perliger, 2005, p. 80). Undeniably, Israel has the experience and expertise to speak with authority on the subject of counter-terrorism.

Collectively, Perliger, Pedahzur and Weisburd provide the most pointed literature on the subject. They disassemble the various stages of disaster and incorporate into their research the Israeli model for post blast response. Greater detail is still sought by these

and other researchers. Sufficient documentation exists to establish the elements of a similar policy in the U.S., although no collective literature exists that binds these various elements together into a single policy for implementation.

## **E. GENERAL ANALYSIS**

Bruce Hoffman (2004) expresses the consensus of authors reviewed, “terrorists are increasingly drawn to suicide tactics because they are devastatingly effective, lethally efficient, cheap, and easier to execute than other tactics” (p. 5). This assertion compels nations to respond to such attacks both offensively and defensively. Although, significant literature has been reviewed that addresses offensive measures, limited literature is available in the nuanced applications of the Israeli defensive strategy of reconstruction.

Perliger and Pedahzur’s position is compelling in that they account for the evolutionary changes in terrorism tactics over the years and concurrently recommend evolutionary changes to collective responses to suicide bombings. They acknowledge that status quo defenses are ineffective when an enemy changes their assault plan. The Israeli defensive strategy although it is underserved by existing research merits further review and study. The present and perhaps future weakness in any study of a population’s resiliency is whether any metric may be applied to measure the effectiveness of any program designed to support resiliency. Likewise, if counterterrorism is a goal of a given mitigation strategy, long-term causation/correlation studies would require more data than simply the location of an event to include strategic information from the aggressor(s) which is an unreasonable expectation.

### **III. ANALYSIS OF THE ISRAELI MODEL**

#### **A. EXPERIENCE DRAWN FROM SUICIDE ATTACKS**

The scope of suicide bombings in Israel was reviewed to form a basis from which a correlative value may be attributed to the Israeli counter-terrorism experience, as rapid recovery is achievable in most instances. Suicide attacks, more so than distantly discharged rocket propelled attacks, relate better to the Israeli effort of reconstruction. Rocket propelled bombs when they meet their intended target are more apt to create greater damage to real property than a suicide bombing. Suicide bombings, which have the ability to significantly affect the loss of human life, typically yield less damage to physical property and are thus better suited for expeditious reconstruction efforts.

The mettle of the State of Israel has been tested with exposure to more than five decades of assault by conventional warfare and terrorist attacks. Unlike the United States, terror attacks in Israel, whether state sponsored by foreign combatants or by unaligned terrorist organizations, are not exceptional but rather, have been incorporated into the fabric of the national experience. Suicide bombings in particular have targeted Israeli locales for more than two decades (COJS, 2011). “Chronic terrorism over many decades has required Israeli institutions to formulate and refine policies for minimizing its impact. These include governmental programs to quickly rebuild an attack site, compensate victims, and memorialize the fallen” (Spilerman, 2009, p. 177).

Taking a particular toll upon Israel has been the effectiveness of suicide attacks. The past decade’s escalation of suicide attacks is represented by the assertion of Bruce Hoffman, “that 80 percent of suicide attacks since 1968 occurred after the September 11 attacks” (Atran, 2006, p. 127). The effectiveness of suicide attacks is reflected in the fact that between 2000–2002, although they only accounted for 1 percent of all attacks, they resulted in 44 percent of Israeli casualties (Cronin, 2002). In the half-decade 2000-2005, more than 1,000 Israelis have been killed as a consequence of terrorist attacks (Morag, 2012). This follows decades of attacks and killings upon Israeli citizens, since its modern inception as a nation in 1948. Suicide attacks, which have been common to Israel, have

had both an immediate effectiveness in the instant moment and a durable prolonged impact upon the public psyche (Ganor, 2000). The Israeli counter-terrorism model is drawn from the hardships of decades of attack that attributes a level of expertise to their response strategies, including but not limited to reconstruction efforts.

“Suicide attack is the most virulent and horrifying form of terrorism in the world today” (Atran, 2006, p. 127). It is all the more insidious because it instills and institutionalizes long-term fear in a non-combatant civilian population. Studies have validated the forgone logic that more people are victimized by the threat of terror than those who are directly impacted by an attack (Borell, 2008). Suicide attacks escalate the level of fear, as they encroach beyond the battlefields and into the daily routines of noncombatants. “Indeed, the psychological impact of terrorism may have less to do with destructive power than with its ability to evoke fear and anxiety” (Spilerman, 2009, p. 170). Consequently, Israel has taken measures to swiftly normalize the scene of an attack to buttress the resiliency of its citizens and mitigate one of the intended goals of a terrorist attack, which is to demoralize the targeted population (Perliger, 2006).

Suicide bombings are intended to occur in high-trafficked and/or high-profile public locations. Reconstruction itself is designed for these types of locations where a restoration of normalcy can be visually measured. However, this is not to suggest that reconstruction efforts are or should be limited to suicide bombings but rather are simply constrained by the practical limitation of the scale of a given attack. The sliding variable in any reconstruction effort is timeliness. Rapid recovery should follow all instances of a terrorist attack, although the expectation of a timely recovery is contingent upon the magnitude of the attack.

Entirely preventing suicide attacks is not feasible. Consequently, it becomes incumbent upon governments to expand their counter-terrorism strategies beyond prevention to include mitigation measures (Nunn, 2004). The Israeli government employs such a mitigation practice. “Suicide attacks constitute an additional stage in the escalation of terrorist activity, with the clear intention of causing the maximum number of casualties and damage-even more importantly-of striking a blow to public morale” (Ganor, 2000, p.

1). “The most important message is perhaps that of fear; terrorist actions are intended to signify risks and instill a general sense of uncertainty and risk” (Borell, 2008, p. 58). Although the impact of terror imposed upon individuals varies, and addressing it may require treatment individually suited, the broad brushed practice of the Israeli government may offer a base line balm for the damaged psyche of an affected population.

## **B. THE ISRAELI MODEL**

In support of adopting a defensive posture to suicide bombings Perliger (2006) concedes with other researchers that, “rather than strive to ‘solve’ the problem of terrorism, we should ‘cope’ with it-the problem of terrorism cannot be completely solved but it can be managed” (p. 281). The Israeli government has also demonstrated a similar pattern of managing terrorism with the construction of its national security fence, which dramatically reduced the number of suicide bombings, which fell from 335 civilian deaths in 2001-2002 to 10 in 2006 (Tristram, 2012). “The Israelis have come to accept some level of terrorism as a fact of life, much as they do road accidents. Actions by the government to minimize the impact on population morale when an attack is successful then come into play” (Spilerman, 2009, p. 184).

In practical terms, “three government bodies in Israel are involved in reconstruction following attacks: the municipal social welfare departments; the National Insurance Institute (NII) and the property tax division of the Treasury” (Perliger, 2006, p. 284). Psychological counseling is provided, assistance in funeral arrangements, financial compensation, and compensation adjustments are made for property loss in this stage. “Of the three stages, this one has been the most effectively executed” (Perliger, 2006, p. 285).

The restoration of normalcy following a terrorist attack is an element of the overall security strategy employed by Israel. “In Israel, the approach taken to enhancing security is many layered. It begins with military actions against terrorist groups and moves to interdiction and apprehension strategies by the police and then to the protective steps taken by commercial firms for their own safety” (Spilerman, 2009, p. 184). The first

tier of the defensive approach is the prevention stage. The first goal is the prevention of a terrorist act but also incorporates the possibility of a successful attack with the intention of minimizing the impact (Perliger, 2005). Perliger asserts the criticality of intelligence collection as a component of the prevention and deterrence strategies employed in Israel is measured by previous successes. Intelligence driven investigations have yielded the interception of would be suicide bombers and foiled plots of future attacks. An example of success of this kind is evidenced that in June of 2003, the Israel Defense Forces prevented as many as 25 attacks in that month alone (Nunn, 2004). Assertive profiling practices have been critical in the identification and intervention of acts by would be perpetrators (Kaplan, 2005, p. 226). More aggressive tactics have included preemptive targeted killings and retaliatory action against agents or governments supporting suicide attacks (Perliger, 2006). Sam Nunn (2004) writes, “preventative strategies must also focus on destroying or interfering with the infrastructure that supports shaheed (suicide martyr) production” (p. 5). Although, it is recognized that military intervention alone cannot resolve the issue (Luft, 2003). David Jaeger (2009) shares the latter sentiment and offers another option, “neither military offenses like targeted killings nor bargaining concessions are likely to quell suicide terror and that the best strategy for doing so is preventive measures like barriers” (p. 318). A fence separating occupied territories is a component of the Israel strategy (Crenshaw, 2007). Perliger, like Jaeger, advocates for the hardening of targets, and Perliger further encourages strategically deploying personnel at high vulnerability venues. A claim of effectiveness for deploying personnel at strategic locations is made by comparing the greater number of successful attacks against buses as opposed to trains. The author argues that although trains are richer targets for terrorists, the guards posted on trains and absent from buses contribute to a lower incident of attacks on trains (Perliger, 2006). However, Perliger contradicts this rubric for success in conceding that security personnel have been ineffective in stopping suicide attacks at restaurants, a concession that no single approach is effective. The indoctrination of situational awareness by the government to the Israeli population affords the public full partnership in deterring suicide attacks.

Crisis management follows as the second tier of the defensive tactic, which includes management of the scene, effective coordination and deployment of emergency medical personnel and sterilizing the scene to prevent a secondary attack from injuring others (Perliger, 2006). Haim Blumenfeld the Commander of the Moriah Sub-District of the INP encapsulates all events of scene management in terms of command, control and coordination (CCC) of all available resources (Blumenfeld, 2013). Progressive and concurrent stages of immediate scene management include securing the perimeter, evacuation of traffic lanes for expeditious transport of the injured, elimination of any additional danger/hazards, evacuation of the injured, implementation of CCC and identification of a staging area (Blumenfeld, 2013).

The Israeli model deviates from traditional law enforcement management of crime scenes in the U.S. in two instances. The Israeli approach acknowledges that secondary incidents may follow within the same crime scene, thus, requiring an amended approach for safety purposes. Suicide attacks in the city of Rishon LeZion in February of 2002 and in Jerusalem in 2001 were followed by secondary attacks (Perliger, 2006). Therefore, restrictions were later implemented that prohibited medical personnel from entering a scene prior to the scene being canvassed for secondary devices. The second deviation of crime scene management is a consequence of Israeli religious practices. ZAKA is an orthodox religious nongovernmental organization that canvasses the crime scene for the purpose of collecting human remains in preparation for burial rites (ZAKA, 2012). As many as 900 ZAKA members stand ready to respond to a disaster scene (Cole, 2007). It is not uncommon for ZAKA members to arrive on a scene as promptly as medical personnel (Stadler, 2005). These actions are the first evidence of a restoration of normalcy, as rituals are observed in the most challenging of circumstances (Spilerman, 2009, p. 178). Bituach Leumi may compensate surviving victims and provide counseling services to victims and their families (Spilerman, 2009, p. 178). The Magen David Adom (MDA) triages and administers aid to the injured (Cole, 2007).

A primary goal of the Israeli counter-terrorism strategy is to “preserve the psychological resilience of the civilian population” (Tucker, 2003, p. 1). This constitutes

the third tier of reconstruction or rehabilitation to a scene and affected persons of an attack. These elements of the overall Israeli strategy merits consideration by the United States for replication in U.S. cities should a domestically located terror attack occur. Rather than striking against the perpetrator in this mode, Israel directs its attack against the fear intended to be delivered.

The Israeli government has made a deliberate effort to counter the demoralizing effects of terrorism by strengthening the psychological coping skills of ordinary citizens. Terrorists seek to invoke a pervasive fear in the civilian population by personalizing the threat so that everyone feels vulnerable, regardless of the statistical probability that a given individual will be affected. In an effort to counter this for of psychological warfare, Israeli terrorism experts from the International Policy Institute for Counter-terrorism visit schools throughout the country and provide educational programs tailored to students of different age groups. These lectures describe the motive and operational strategy of terrorists, with the aim of immunizing students against the personalization of terror. (Tucker, 2003, p. 10)

Targeted educational programs, public campaigns, and debate are just a few of the means that need to be applied in preparing the public and enhancing its resilience” (Kulick, 2009, p. 142). Spilerman and Stecklov speak to the issues of affected populations of coping with the imminent threat of a suicide attack. “At the psychological level, coping style refers to an individuals cognitive processing of terror and trauma-essentially the way that these stressors are internalized and integrated into a person’s psyche” (Spilerman, 2009, p. 174). “The emphasis in Israel is on coping as a behavioral strategy for confronting mortal risk” (Spilerman, 2009, p. 176).

### **C. IMPLICATIONS FOR THE UNITED STATES**

Bruce Hoffman (2003) says, “if suicide bombing (was) to commence in the United States, it would be different in many ways from what we see in Israel (and) our defenses would have to be different” (p. 2). Hoffman may be correct, as there are multitudinous elements related to defense. However, common ground is shared by all affected persons of terror and that is the impact of fear. “When settled times become



unsettled times, people's everyday world is affected and things that they previously took for granted become problematic" (Borell, 2008, p. 66).

Several studies have been published on the psychological effects of terrorism and recurrent terrorist acts on mental health of Israelis (Bleich et al., 2003, 2006; Pat-Horenczyk et al., 2007; Sharlin et al., 2006; Stecklov and Goldstein, 2004). In general, behavioral consequences of terrorism are frequently manifested in depression, post-traumatic stress disorder (PTSD), substance abuse or other physical symptoms (DiMaggio and Galea, 2006). Researchers often attempt to quantify a terror attack according to resiliency and recovery of its victims from these adverse effects (Bonanno, et, al, 2004; DiMaggio and Galea, 2006). (Peleg, 2011, p. 270)

These symptoms are not nationalist, religious or cultural but common to the human condition. The defenses that Israel uses in its reconstruction phase should be explored for replication in the United States. In this regard, if not a change in routine but a change of expectations and perceived outcomes may serve U.S. citizens. Largely shielded from the volume and frequency of suicide attacks domestically of the kind occurring in Israel or Sri Lanka, changes to psychological expectation of suicide attacks in the U.S. have not evolved. If the value of suicide attack may be marginalized and seen as less effective, it may logically follow that the frequency of such attacks are likely to decline.

Each month, there are more suicide terrorists trying to kill Americans and their allies in Afghanistan, Iraq, and other Muslim countries than in all the years before 2001 *combined*. From 1980 to 2003, there were 343 suicide attacks around the world, and at most 10 percent were anti-American inspired. Since 2004, there have been more than 2,000, over 91 percent against U.S. and allied forces in Afghanistan, Iraq, and other countries. (Pape, 2010, p. 2)

"Anti-American suicide terrorism is rapidly rising around the world" (Pape & Feldman, 2010, p. 318). "The incidence of suicide bombing is nominally low, but the casualty rates from such events are disproportionately large, and many believe suicide attacks in the U.S. are inevitable and will only increase" (Nunn, 2004, p. 14). Recognizing that the cost of materials needed for a suicide bombing are approximately \$150 and accessibility to the Internet will provide the education required to construct

such a device there are few physical limitations to executing a suicide attack (Cronin, 2002, p. 10). Means, opportunity, and access to materials and knowledge point to the inevitability of future attacks.

Arie Perliger and Ami Pedahzur (2006) focus upon Israeli lessons learned from suicide bombings. They direct their research towards a multi-tiered defensive model, which is presented as “prevention, crisis management and reconstruction” (p. 283). They note that earlier counter terrorism models of the 1970s and 1980s employed a strategy of striking at centralized nodes of terrorist networks. However, these models were in response to terrorist activities decades earlier and fail to address the changes embraced by modern terrorism. Modern terrorism, as they define it, lacks centralization, and although organization may be present, the physical components are distant and networked (Perliger, 2006). Consequently, an offensive strategy fails they state, if only because there are no centralized targets to be identified and neutralized. They further note that the failure is greater in instances of mass casualty terrorism, which is the earmark of suicide attacks. This claim is made as suicide bombers, the agents of mass casualty terrorism, may be dispersed in an indeterminate number of households across a given territory providing no central target to attack. What makes Perliger and Pedahzur’s position compelling is that they account for the evolutionary changes in terrorism and recommend a concurrent Darwinian response to deter suicide attacks. They acknowledge that status quo defenses are ineffective when an enemy changes their assault plan. A mitigation strategy that addresses a successful terrorist attack in the U.S. remains a required element for natural selection in conflict with terrorists.

#### **D. PSYCHOLOGICAL VALIDATION FOR RECONSTRUCTION**

The basis for any strategy, whether related to counter-terrorism measures or otherwise, must have a basis for implementation and a means to validate its efficacy. In the instance of reconstruction, the defining goals and basis for the strategy are to contribute to the resiliency of a population and dissuade further attacks by marginalizing their impact with rapid reconstruction of the damage incurred by an attack. Simply validating the strategy by means of metrics is challenging if not impossible, as the

intrinsic value to the strategy cannot be captured by data alone. Marking lower instances of an event over time is a measurable metric. However, attributing a single element of a larger counter-terrorism strategy, reconstruction in this instance, as the reason for a reduction in attacks is not necessarily quantifiable. However, applying the science that supports the psychological benefits and reduction to emotional harm is a means to validate the strategy that supports reconstruction efforts.

Terrorist attacks wound not only body and limb but also inflict injuries upon the mental well being upon those impacted by an attack. The mental injuries may be temporal or chronic, and like physical wounds, require healing. The challenge to repair a scarred psyche is greater than that of repairing an injured limb, which makes the response of the Israeli government to domestic attacks all the more critical, as it serves to mitigate the psychological damage inflicted upon the affected populace. A primary goal of the Israeli counter-terrorism strategy is to “preserve the psychological resilience of the civilian population” (Tucker, 2003, p. 1). Understanding how that psychological damage is mitigated by visibility changing the landscape of an area impacted by an attack requires an understanding of negativity bias and how it impacts human thinking and relates to emotional well being. Events or circumstances that have a negative connotation or impact have a greater influence over our cognitive thought process than do positive ones (Marano, 2003). Changing the visual stimulus, in this instance a scene damaged by an attack, effectively changes the mental constitution for the better. Addressing negativity bias is the rationale for the Israeli efforts to reconstruct a scene damaged in a terrorist attack. Coping is one of the behavioral strategies Israel employs to address the mortal dangers that overshadow daily routines, more so than in other nations (Spilerman, 2009).

“Terrorism is the ‘perfect’ traumatic stressor because it combines the elements of malevolent intent, actual or threatened extreme harm, and unending fear of the future” (Miller, 2002, p. 296). Those with direct exposure to a terrorist attack, whether by being injured, or witnessing the carnage, or having sustained the loss of family or friends, suffer the greatest toll upon their mental health (Bongar, 2007, p. 407). However, the designated victims of a terrorist attack are broader in scope than those who are personally touched by

any given attack. The target of a terrorist attack is neither limited nor confined by geographic coordinates but extends, without limit, to the minds of those psychologically vulnerable to such an attack. The psychological impact of an attack can travel across the globe and have serious repercussions for those impacted absent a direct or even indirect relationship to the actual event. Fear remains a common denominator across the human condition regardless of culture, language, race, custom, or heritage. Bongar (2007) suggests that terrorism is aimed at noncombatants and at impacting the mental psyche of would be victims (p. 400). In the case of Israel, “the Israeli experience has also shown that initial psychological reactions after a terror attack are more intense than those from other traumatic events like road accidents” (Cole, 2007, p. 109). Consequently, counter terrorism efforts must not be limited to preventing an attack, but it must also incorporate responses to protect the mental well being of a community and nation following a successful attack.

When sociologists study daily life they usually depict a more or less stable, long-term, subjective reality. People perform their daily affairs without questioning this taken-for-granted reality, not needing to define each situation or to consider alternative ways of behaving (e.g. Berger and Luckmann, 1966; Garfinkel, 1967). But everyday life is not always stable. Stability can be replaced by instability, predictability or unpredictability. During such critical periods, (Giddens, 1984)-when the established patterns of daily life are undetermined or shattered-people’s mental habits and routine, background assumptions are challenged. (Borell, 2008, p. 55)

Borrell applies this concept to his study of the population of Beirut in 2005, which sustained fourteen terrorist attacks in a ten-month time span. Normalcy, rather than being something the population needed to return to following an attack, was something that needed to be redefined. Behaviors and routines were altered to address new dangers and subsequently these altered behaviors became the new normal. Applying what Borell defines as rebracketed normalcy, reconstructing a scene damaged by a terrorist act would be aligned with the community’s rebracketed normalcy until such time the evidence of the attacks was lost in the reconstruction efforts. The automation of required tasks to follow with a defined sense of purpose and value may lend a sense of control to the impacted population and strengthen the collective psyche damaged from the attack.

For those most directly affected by the terrorism-the victims and families-the consequences are profound and often long-lasting. Suffering from depression or post-traumatic stress disorder, they may need treatment for years afterward. Indeed, the terrorism has imposed a condition of permanent stress on the entire population. But the stress is part of a strange norm. It is tucked into the collective psyche, often beyond consciousness. Even with the anticipation of further terrorist attacks, anxiety is overshadowed by determined resilience. (Cole, 2007, p. 16)

Supporting a redefined normalcy by promptly restoring normalcy to a scene is more than improving the visual imprint. It is in effect reconstituting the damaged psyches of an impacted population. The longer lasting consequences of a terrorist attack, as suggested by Cole, cannot be summarily dismissed by reconstructing a damaged scene. However, as Borrell suggests, an alternate normalcy would take hold and in some measure diminish the impact of the initial attack and perhaps diminish the longer lasting impacts articulated by Cole.

The U.S. is not immune to the paralyzing fear that follows or precedes a suicide attack. “A study conducted in New York City showed that the terror attacks (September 11) led to considerable traumatization of those living in the immediate vicinity of the attacks (Galea et al., 2002), and national investigations showed that the attacks caused considerable distress across the country (e.g., Schlenger et al., 2002)” (Borell, 2008, p. 58). “In a national survey of stress reactions in the week following the attack (September 11), Schuster et al. (2001) found that 44 percent of adults reported substantial symptoms” (Spilerman, 2009, p. 171). Among the various levels of unpreparedness for the events of September 11, the United States had no preparatory plans to address the national psyche that was also attacked on September 11. Unfortunately too, in the case of the September 11 attacks, the breadth and depth of damage incurred did not allow for a swift reconstitution of the physical scene. Further aggravating a prompt recovery were the financial and political considerations that have prolonged construction for more than a decade. Consequently, the emotional and mental toll that followed the fall of the Twin Towers less than two hours following the attack has extended for more than a decade later, with the still unfilled site as reminder of the attacks.

Negativity bias is a psychological principle used to define the overarching influence negative experiences have upon people as opposed to positive events. “There is ample empirical evidence for an asymmetry in the way adults use positive versus negative information to make sense of the world” (Vaish, 2008, p. 383). The “brain is simply built with a greater sensitivity to unpleasant news. The bias is so automatic that it can be detected at the earliest stage of the brain's information processing” (Marano, 2003, p. 1). Vaish and others suggest through their studies that negativity bias is evident as early as six months in age in a newborn (Vaish, 2008, p. 388). Psychologists attribute, in part, this phenomenon of human nature to the most primal instincts related to survival. Alertness to danger or potential harm may heighten a response to avert same. Consequently, negative incidents receive a greater emphasis by our thought processes, have a greater influence upon the human emotional condition and have a direct impact upon a populations’ resiliency when confronted by danger and harm.

It has been suggested by psychologists that the impact of negative influences is as much as five times greater than positive ones (Marano, 2003, p. 1). “By positive, we mean, ‘desirable, beneficial, or pleasant outcomes including states or consequences,’ whereas by negative, we mean ‘undesirable, harmful, or unpleasant’ outcomes” (Vaish, 2008, p. 385). Relative to acts of terror, employing a ratio of that kind into a response calculus to mitigate the influence of negativity bias upon a population’s mental health would require either constructing positive bias five times greater than the negative bias or simply diminishing the value of the negative bias. The Israeli model opts for the latter.

Framing a response to restore or maintain mental health following a successful terror attack is distinctly different from one following a natural disaster. Bongar et al. point out that, “the intentionality of an act of terrorism serves as a signal contributor, differentiating the responses of victims of a natural disaster from those of victims of a terrorist attack” (Bongar, 2007, p. 33). So long as survival remains the cornerstone of all primal instincts, one may conclude that issues of personal control and safety are never willingly surrendered. However, in instances of natural disasters there is a greater

propensity to yield to fatalistic views that events of these kind are outside of our ability to control. That however is not true of terrorist attacks.

The implication of intentional malevolence, which can neither be effectively predicted or prevented, and the concomitant feelings of uncertainty, distrust and loss of control that follow are fundamentally different from the experience of fear associated with a naturally occurring disaster-even if the disaster is serious and large scale. Where as one can prepare for an earthquake or a hurricane, the nature of a terrorist act is likely uncertain and defies effective preparation. (Bongar, 2007, p. 33)

Unlike a natural disaster, a terrorist attack is a manufactured event planned with foresight. Consequently, it follows a logical path that the remedy must similarly be a manufactured response, in this instance the Israeli reconstruction model, to mitigate the impact.

The negativity bias that emerges from a successful terrorist act is only as potent and viable in its intended impact, as is the success of translating the intended message to the broader global population. Traditional media and more so, social media venues are beyond the ability of governments to control in shaping and transmitting news. Interestingly, dichotomous roles for the media take form whether as an entity reporting an event or as an unintended facilitator of the very terrorist acts that they are reporting. The hypothetical that emerges is that in the absence of any media reporting would terrorist acts continue to propagate? “The media find themselves in a dysfunctional position relative to terrorism. On the one hand, they must report terrorist acts as they happen. On the other, they are part of the reason these incidents occur in the first place” (Bongar, 2007, p. 81). Some would go so far as to suggest, “without the media there would likely be no modern terrorism” (Bongar, 2007, p. 82). Although that is an improvable hypothesis, studies have shown the relationship between terrorism and the media, mutually serving the interests of the other (Lockyer, 2003). Terrorism has been correctly identified as political theatre (Bongar, 2007).

Rather than embracing a Sisyphus like model of trying to change media distribution of news, it may be wiser to leverage the existing systems to the benefit of the population’s resiliency. Although governments cannot necessarily control the narrative of

any media event, they can certainly provide content, with the expectation that the same content may impact the narrative. Reconstructing a scene damaged by a terrorist bomb within hours of the event has the potential to alter the media narrative and diminish and/or alter any negativity bias.

Reconstruction efforts provide an invaluable visual aid in showing people shopping or eating in the same outdoor malls or cafes that was the location of bombing hours earlier. If it is agreed that the primary deliverable of terrorism is fear, reconstituting normalcy effectively negates the value of fear. The reminder of terrorism's mate, fear, is only evident as long as the damage incurred remains visible. Certainly, casualties, injuries and emotional trauma will long endure after reconstruction efforts for those directly impacted by an attack. However the larger population, which is married to an event only by visual depictions, will sooner be divorced from the intended fear once the images change. Hobfoll (2008) supports, through studies, that those more geographically distant from an event suffer a diminished impact (p. 9).

In the context of the Israeli model, reconstituting a sound mental state of mind following a terrorist attack occurs in tandem with reconstituting structures damaged in those same attacks. Managing negativity bias and mitigating fear is not a consequential outcome of the Israeli model, but the objective goal of reconstruction. Restoration of normalcy acts as a palm for the injured population and concurrently diminishes the impact of the attack. "Major disasters and catastrophic events produce changes in habitability, the environment, the economy, and even in geography that can often preclude a return to the way things were. We must anticipate such changes and develop appropriate tools, knowledge, and skills to adapt, improve sustainability, and maintain our way of life in the aftermath of disaster" (QHSR, p. 75, 2010). An essential element of planning in the U.S. should specifically address the legal and practical means to mandate rapid recovery in circumstances of a terrorist attack.



## **IV. ANALYSIS OF A PROPOSED U.S. MODEL**

### **A. FRAMEWORK FOR A U.S. MODEL**

Any reconstruction model, akin to the Israel, implemented in the U.S. must work in conjunction with existing response and recovery models, whether local, state, or federal. A U.S. reconstruction model may augment or replace existing systems designed to address disaster response. A relationship between FEMA and the National Guard, as well as the application of NIMS and conformance to legal requirements, are among the existing systems that may must be considered and factored into a reconstruction model. No single system may be siloed to the exclusion of the other. Rather than recreating systems that already exist, a U.S. reconstruction model would be better served by working within the mechanics of existing systems with minor modifications where required.

The legal culture of the United States would frown upon those investigations where a crime scene was not examined to the point of exhaustion. Likewise, prosecutorial requirements for criminal investigations could very well be jeopardized in such instances. Consequently, any framework for a U.S. model must consider evidentiary requirements prior to management of the scene proper. The U.S. does not share the same process by which in-camera intelligence information is admitted for prosecutorial purposes to the exclusion of the defense, as is true in Israel. Consequently, the collection of physical evidence remains a critical part of any investigation and subsequent prosecution in the U.S. A resolution for this possible impediment to a U.S. model of reconstruction could follow either through the legislative process and/or through assembling and training crime scene units designed to address this specific need. National standards that presently outline law enforcement response to bombings could be augmented to address timeliness issues required to forensically process a crime scene. Additionally, legislation could limit by law the amount a time a scene may be held for evidentiary purposes, which would address later inquiries about limitations encumbered while processing a scene. Although a typical Israeli scene is forensically cleaned and washed up within six hours time, an

extended period would be more reasonable for the U.S., with the objective goal to restore normalcy to a scene within a twenty-four-hour period.

FEMA in their *Crisis Response and Disaster Resilience 2030* report makes specific note of the increasing complexity in emergency management and the decreasing predictability of events (FEMA, 2012). The product of this calculus is increased risk. Meeting this need is challenged with the expectation that fewer funds will be available to address the increasing needs. Creativity and innovation are offered the solutions to counter decreased resources and funding. “Foresight tells us that the future will challenge us to be even more inventive in our thinking about the tools and solutions we will need to be successful” (FEMA, 2012, p. 15). The reconstruction of sites damaged by terrorist attacks is but a single element of a crisis response. However, this spoke in the counter-terrorism wheel is one that may be leveraged within existing systems modified to address this task and done so at a marginal cost.

The objective of this proposal is to craft a framework by which the United States can implement a model, akin to that employed by the Israeli government, to reconstruct scenes damaged by terrorist acts in an expeditious manner, conceivably within twenty-four hours following such an attack. In most cases, the Israeli government is able to successfully meet this goal within hours (Weisburd, 2009, p. 24); however, recognizing that this model or better defined system is “nested within other systems” (Meadows, 2008, p. 15) presently employed within the United States to respond to terrorist acts, a more realistic application may require more time than the Israeli model. Additionally, limitations apply relative to the scope and scale of an attack. A recognition of the complexity of governmental and NGO organizations that may respond to a terrorist event requires an understanding of the system in which such a response might reside.

The model is defined in terms of a system because it is not a singular entity but is built upon relationships with other practices currently in place to address acts of terrorism (Meadows, 2008, p. 2). These practices, as structures within the system, may include but are not limited to, policies and procedures for first responders in response to terrorist acts, evidentiary requirements related to crime scenes, current practices for triaging and aiding

the injured, and application of scene management in the form of the National Incident Management System (FEMA, 2012). The complexity of existing response models to acts of terrorism and varying degrees of responsibilities across federal, state and local government form the framework of an interconnected system designed to achieve shared goals (Meadows, 2008, p. 11). The rationale that more time may be required for a U.S. system than the Israeli model is that although the multiple systems at work may be related to one another, they may not be necessarily dependent upon one another. Aiding the injured and reconstructing a damaged scene are related by the act of terrorism that prompted their response; however, these processes within the overall response system are not dependant upon the other for functionality or success. Consequently, although the overall system may embrace multiple goals, the goal of this model within the system would be to restore and sustain resiliency for a population impacted by a terrorist act. Diminishing the visual impact of the attack in the form of reconstructing a damaged scene may satisfy this goal.

Any system designed for the United States must be sufficiently pliable to address the parochial needs of a very diverse nation. Meadows states that, “one of the main challenges (for systems) is that public agencies and public officials tend to operate on the assumption that they have the prerogative and obligation to make their own autonomous decisions” (Meadows, 2008, p. 6), which underscores the need for local direction to avert the failures that follow monolithic decision making. Although a given model/system may be framed through federal policy, similar to the design of NIMS, the execution of the system must be delivered and produced locally. “Theory provides ways of seeing and why practices do or do not work in particular ways, it offers a critical distance that helps surface unexamined assumptions and places in perspective, it provides a basis for an evaluative framework; and it generates insights leading to new ideas and directions” (Innes 2010, p. 15) that should be the conceptual federal model for the U.S. Although some federal mandates and/or leveraging of existing federal law may be required to facilitate the process of reconstructing a damaged scene, it should remain incumbent upon nonfederal governmental agencies, whether at the state or local level, to implement the mechanics of the actual reconstruction. The construction of a system of this kind

would require the federal government taking ownership of the theoretical framework and local government taking ownership of the actual practice. All elements of the model should include some of the same pillars of the NIMS model to include scalability, portability and resiliency (FEMA, 2012).

The ability of the United States to effectively reconstruct a scene on domestic soil that was damaged by a bombing would be calibrated by the extent of the damage. It would also require some refashioning of existing laws to allow for same. The scale of any attack would certainly dictate the ability to reconstruct, and clearly in circumstances like the events of the 9/11 attacks, the magnitude of an attack may effectively shelve a timely reconstructive process. However, should opportunities arise to implement a reconstruction exercise; one would intuitively think that there would be neither political nor popular opinion objection to restoring property damaged by a terrorist attack. However, there are political and constitutional concerns that must be addressed. Any reconstruction efforts in the United States would require three essential steps to be followed; (1) temporary seizure of property, (2) compulsory rehabilitation and (3) establishment of a standing federal fund to support reconstruction. Objections could easily arise from any one of these essential components of a reconstruction system.

In the event of a terrorist attack that resulted in damage to physical property, the ownership of the property would dictate one of two responses. If governmentally owned facilities were damaged in bombing, internal federal rules and regulations may be adopted to address a reconstruction effort. However, it is a safe assumption to conclude that privately owned businesses and infrastructures, if not directly targeted, would be included in any collateral damage, which would reside outside of existing or newly framed mandates for reconstruction of government buildings. Although in many instances, private insurance may cover damages incurred and eventual reconstruction of a damaged area would follow, it is the expeditious nature required of this system that would not be met under ordinary circumstances. Rather than mandating reconstruction of a scene by private owners, which would likely face constitutional challenges, it would be the recommendation of this proposal to exercise existing laws of eminent domain and

expanding those same laws to allow government to temporarily seize private property for government interests. The two-pronged requirements for government seizure of properties under eminent domain are that the property be for public use and that there is fair compensation to the owner (Meidinger, 1981). The seizures of privately held properties would be of a temporary nature for reconstruction purposes only and seized from the authority related to national security interests, as has been previously done under the War Powers Act of 1941 (U.S. Code, Title 50, 2006).

Seizure of privately held property, even if only on a temporary basis for the purposes of immediate reconstruction would face legal challenge. Although existing laws may be tailored to satisfy the government's ability to seize such property, such seizure is the antithesis of the safeguards embedded in the Fourth Amendment of the United States Constitution. Despite the "dynamic equilibrium" (Meadows, 2008, p. 21) of an even exchange between seizure of property and its immediate return, even in an improved condition, the purported loss of civil liberty protections will form the objections. In this instance, the system fails because the greater good served to support resiliency is lost to a singular issue and interdependent relationships are not acknowledged. Essentially, the civil liberties sought to be protected ignore the possibility that more liberties may be lost at the hands of successful terrorism. Herein, lays the greatest challenge to the system to identify and sustain balance in the protection of civil liberties. Public opinion may be leveraged to serve as a feedback loop for the system to measure how much of an infringement of civil liberties is palatable to the public to combat terrorism. This measure within the system is not intended to be static, but evolutionary, allowing for measured changes to adapt to the will and need of the populace (Meadows, 2008, p. 12). If the system is not sufficiently pliable to address public and political pressures, it will fail over time.

Once the effected properties were seized, federal entities could issue immediate work orders to reconstruct damaged facades, private roadways, etc.. Emergency work orders of this kind were issued by the Port Authority of New York and New Jersey following Hurricane Sandy in 2012. Additional legislation would be required to suspend

competitive bidding processes, although a list of preauthorized vendors and contractors would be available to support the needed work. Funding to support the reconstruction efforts would be drawn from a central federal fund designated for this effort. Following reconstruction, federal entities would collaborate with those insurance companies that may have insured such properties to reclaim costs.

From this two-stage process of reconstruction, rebuilding and funding, arise the last two objections to the process. The suspension of competitive bidding and/or designating preferred vendors to respond to emergency situations holds the potential for corrupt practices to take place. Exigent circumstance decision making by its very nature circumvents the ordinary vetting process and escapes the checks and balances that breath integrity into a system. Certainly, “feedback loops,” which Meadows describes as the “relationship between structure and behavior to better understand why systems succeed or fail” (Meadows, 2008, p. 1) may provide an auditing process to identify any inappropriate practices and conduct, however, they do not sustain the system in any traditional way and would serve only as a post mortem to outcomes. In the instance of this proposed system, a “balancing feed back loop,” one used to measure and ensure stability and control, might better serve the need (Meadows, 2008, p. 28). However, “because of feedback delays within complex systems, by the time a problem becomes apparent, it may be unnecessarily difficult to solve” (Meadows, 2008, p. 3), which may undermine any system working under exigent circumstances.

The funding employed to float the reconstruction, until such time insurance companies could settle claims, would also be a source of discourse and debate among critics. Whether or not the federal government has the ability to compel rehabilitation and demand compensation for what may be disputed claims is debatable. The governmental response to address these and any other objections is to exercise, through legislative precepts “mutual coercion” (Meadows, 2008, v. 13, p. 108), a means to compel individual interests to yield to the interests of the greater good. Shared responsibility in addressing and responding to terrorist acts cannot be limited only to those whose homes and businesses are destroyed and/or are maimed or killed in an attack. Those sharing the

benefits of a communal society bear a shared obligation to act in concert to abate terrorism by whatever measure available, supporting the concept of mutual coercion, if so required.

The overarching goal of reconstruction is not replacing broken glass and repairing fallen bricks but in repairing and sustaining the resiliency of a population impacted by terrorism. Resiliency comes in many definitions, but elasticity appears to be the undercurrent to all of them. Meadows suggests, “resiliency is a measure of a system’s ability to survive and persist within a variable environment” (Meadows, 2008, v. 13, p. 67), which is certainly applicable to a community or neighborhood fallen siege to a terrorist attack. Although terror attacks may be anticipated or acknowledged as inevitability, each individual attack upon a specific neighborhood remains an unpredictable event. Taleb takes it a step further in simply discounting the value of predictability when he says, “we need to adjust to their existence rather than naively try to predict them” (Taleb, 2007, p. xxv). To that end “awareness of resilience enables one to see many ways to preserve or enhance a system’s own restorative powers” (Meadows, 2008, v. 13, p. 69), which would be required for the sustainability of this model. The speed of innovation, the dependency upon information and how it is shared and imparted, as well as the social networking that exists will all impact the awareness of future crisis management events. How it is impacted may be favorable or not contingent upon the veracity of the information being shared and the strength of the delivery of communication systems. Essential services information and updates delivered through the Internet, wireless devices, or other broadcast venues allows for the accelerated dispensing of information in real time. The information delivered in turn is quick to shape the public’s perception of an event and any correlative response. All of these same variables applied to a reconstruction model work to the benefit shaping public opinion about the impact and/or success of an attack. The same means by which an attack is reported may be abated within the framework of the visual efficacy of reconstruction. A reconstruction model similarly delivered to satisfy the public appetite for information might well mitigate the negative impact of an attack.

Certain events will remain outside of the ability of a reconstruction model to address. As noted earlier, scale and scope will dictate limitations. However, consideration to the interrelationship between competing needs within the system that comprises homeland security must be considered in projecting potential outcomes. If reconstruction is the goal at a viable scene, calculation of resources beyond repair and reconstruction must be included in the calculus of expenditures required to sustain the system. Careful, deliberate and exhaustive collection of evidence is a requirement for investigative purposes and any prosecution that may follow. Expedient clean up of a scene may hamper the ability of forensic collectors to adequately complete their tasks. A loss of valuable evidence may follow. Alternately, recognizing the expediency to clean up a scene may require an increase in the number of investigators and or evidence collectors available, which would impose an unanticipated burden upon local police agencies. Likewise, even before collectors can enter the scene, it is the responsibility of law enforcement to comb the area for secondary devices. Much like the collection of evidence, this hastily performed exercise will occur either at the loss of a fully comprehensive search or at the expense of more personnel to conduct the task within an artificial timeframe. Donner addresses outcomes of these kinds when identifying the unintended outcomes of good intentions, which are not always aligned with the initial goal (Donner, 1997). Meadows suggests that “systems can change, adapt, respond to events, seek goals, mend injuries, and attend to their own survival in lifelike ways” (Meadows, 2008, p. 12), which would be necessary for this model to advance. In examining a number of scenarios that would require crisis management, FEMA identified three key categories of high-level needs to address future events. These three components were:

- (1) **Essential Capabilities** the community will need to build or enhance in order to meet future challenges;
- (2) **Innovative Models and Tools** emergency managers will need to optimize resources, anticipate events, or deal with complex and/or strengthened problems; and



- (3) **Dynamic Partnerships** that will need to be formed or strengthened to meet surge requirements or to absorb critical new skills and capabilities. (FEMA, 2012, p. 12)

Applying these categories to a reconstruction model, community capabilities must include a resiliency element that is adopted by the community. An understanding that normalcy will occur within a given timeframe, and that there is an expectation the community will contribute to the events that follow the actual reconstruction, are crucial to the model's success. Simply building it with the expectation they will come is unrealistic. There must be a community buy-in to the program. The innovative model is the actual execution of reconstruction. Working in tandem with first responders, notably law enforcement, a concerted effort to collect necessary forensic evidence while mindful of assembling the tools and resources necessary for reconstruction must occur in concert. The dynamic partnerships are a blend of private and public contributions to the model. Insurance claims must be aligned with the goal of the model to allow for future reimbursement when applicable.

Terrorist acts often inflict carnage that may result in the deaths of a few or many. In either case, the victims of any event are exponentially expanded beyond the actual number of persons killed, in the form of grieving family members, friends and colleagues. Remembering and memorializing those victimized by such an attack is not uncommon and memorials at the site of an attack often follow. There are instant memorials in the form of flowers and candles left behind to remember the deceased, and there are later more permanent memorials that follow set in concrete and stone. In both cases, the grounds are considered scared and the impact of an immediate clean up and restoration of a site is a factor to be considered relative to surviving family and friends. Whether the greater value to memorials is to survivors and their families or to terrorists serving as both a flag in the sand and trophy is debatable. However, realistic political applications would not likely favor dissuading construction of such memorials. Rather than engaging in this debate, this document would recommend that the erection of memorials follow the customary process with the only caveat that the timely reconstruction of a scene not be inhibited by future considerations of memorials. The first

obligation of government is the restoration of normalcy to an impacted scene. Following such reconstruction, the political winds that may direct and/or support construction of memorials may follow. If the systems that exist to prevent an event, respond to an event and repair a site are interconnected and share a relationship, each element must adjust to some degree to accommodate the needs of the other component to satisfy a common goal (Meadows, 2008, p. 11).

A mirror replication of the Israeli model for the United States is not feasible, although adaptation of the Israeli system to one better aligned for the United States is within the constructs of any successful system. However, there are applications of existing eminent domain laws in the United States, coupled with a newly organized federal response to domestic acts of terrorism that may allow for the United States to mimic the Israeli response, albeit in a limited role. The fact that another alternative does not exist, it would be prudent to consider the limited application of the Israeli model. Certainly, some tactics may face Constitutional challenges in the U.S., however, the mitigation strategy requires a radical approach to desensitize the general public to terrorist attacks occurring domestically and their aftermath. The mitigation strategy, employed by Israel, in response to domestic bombing attacks during what is identified as the reconstruction stage may serve as an exemplar for U.S. policy. Although there are, “limitations to draw inferences from the Israeli case to the U.S. and other Western democracies, the Israeli model remains an important example to draw lessons from, both in terms of police strategies, and the impacts of entrusting democratic police agencies with key Homeland Security functions” (Weisburd, 2009, p. 5).

## **B. CIVIL DEFENSE**

The institutional rationale justifying government to implement and mandate a reconstruction model in the U.S. may be satisfied in part through the historical practices and intent of civil defense in the United States. Distinctly different from civil defense in Israel, the theory, rather than the past practice, of civil defense in the U.S. would justify the implementation of reconstruction. In Israel, a substantial volunteer population, the Civil Guard, augments the Israeli National Police in a civil defense role (Blumenfeld,

2013). A U.S. model would not be contingent upon a similar contribution from the civilian population, although the historical intent of civil defense in the U.S. would support mandatory reconstruction efforts.

Any efforts to implement a system designed to serve as a reconstruction model in the United States would require first a legal basis of authority to do so. The Israeli model is an evolutionary process that has been sharpened by decades of attacks upon domestic soil. As a consequence of consistently being a target of terrorist and state sponsored attacks, best practices have emerged from the Israeli experience and incorporated into the fabric of their legal system. Aside from the actual mechanisms of such a system, if a similar practice of reconstruction were to be employed in the United States an institutional framework would be required to support such a system. Elements of a U.S. framework would likely be greater weighted towards response than preparedness measures, although the institutional measures to execute reconstruction efforts would be settled in a preparedness stage. In a 1969 report on the status of the civil defense program in the U.S., the Office of Civil Defense notes that a fundamental element of national civil defense is that, “management of the program is the joint responsibility of the Federal, State, and local governments, working in local cooperation with public and private institutions and organizations, commerce and industry, and other major elements of society” (Civil, 1969). Critically, the OCD identified the very elements required to implement a modern day system for reconstruction in the U.S. An examination of historical civil defense measures and policies in the U.S. provide an opportunity to construct and validate a framework for reconstruction efforts should they be adopted and underscore the historical significance placed upon protecting the mental health of citizens.

Civil defense is the forbearer of modern day comprehensive emergency management. It is a concept that has a history that spans eons and crosses civilizations with the monolithic remnant of the Great Wall of China serving as a reminder of its relationship to homeland security. In the United States, one of the earliest recordings of civil defense occurred in 1692, where a local village in New York employed a salaried

drummer to forewarn residents of any impending Indian attack (Towne, 1996). The practice of notifying area residents of an attack evolved little in the centuries to follow, other than perhaps substituting a drum with a mechanical or electronic siren. Sirens of these kinds were regularly used in the U.S. during World War II to warn of an impending attack and later employed after the war in nuclear defense drills. They too have been utilized to alert citizens of natural hazards. Historically, civil defense was designed to protect against and forewarn of an attack. Although those same elements remain a component of civil defense, response and related resiliency factors have become critical elements of the practice of civil defense, wherein opportunities to define a system of reconstruction may be embedded.

The onset of the First World War in the United States gave rise to the Council of National Defense (USC 50, 2012). Although only an advisory board, the implementation of the Council of National Defense codified civil defense and preparedness on a national level. In its legislative definition by Congress, the Council was intended to align the needs to expeditiously transport military personnel and to ensure that required supplies for the military were available and coordinated with nationally available resources. Essentially, the government prioritized military needs above others and empowered the Council to satisfy such needs. Notably too, the Council was charged with maintaining public morale, a recognition by government of the importance of resiliency in the face of conflict. This same need applies to those generations that have followed similarly faced with the uninterrupted conflict imposed by mankind. Justification for financial support for a modern day reconstruction may be supported by the decade's old allocation provided to the Council, which was charged with sustaining public morale. Comparatively, the Council was enacted with \$200,000 in initial start-up funding in 1916 (NYT, 1916) whereas, the 2011 budget for the Department of Homeland Security is more than 56 billion dollars (DHS, 2011, p. 3). An argument may be made that an equivalent correlative amount of the current 56 billion dollar budget be allocated to strengthening and supporting the resiliency of a population impacted by a terror attack.

As the Council was primarily focused upon meeting military needs for the First World War, it was subsequently disbanded in 1921 (National Archives, 2012). In the interim between the First and Second World Wars, President Franklin Roosevelt instituted the National Emergency Council in 1933. Among other duties, it addressed issues of national preparedness (DHS, 2006, p. 5). However, with the U.S. involvement with the Second World War, the Council of National Defense was again established in 1941. In addition, the Office of Civil Defense was created, which among its many responsibilities were to protect the morale of the American public. Government recognized with the inception of the Council of National Defense in 1916, and later in its reincarnation in 1941, that in defense of the nation, protecting the psyche and mental health of citizens was an elemental component of civil defense.

The latter introduction of the Cold War under President Harry Truman's administration brought with it a number of iterations to the government's responsibility and role in civil defense. Air raid drills, 'duck and cover' exercises practiced in schools, construction of community fallout shelters and the planning of evacuation routes for urban areas were common practice (McEnaney, 2000, p. 6). The heightened fears of nuclear attack accelerated the need to better institutionalize civil defense. However, with the passage of the Federal Civil Defense Act of 1950, rather than having a federally legislated civil defense, the responsibility of civil defense was largely delegated to states. The responsibility of the federal government was largely marginalized to providing policy recommendations for the states (Cohen & Boyer, 1951). The Federal Civil Defense Administration, a product of the FCDA, served as the federal coordinating agency between various resources and absent any substantial funding served as a paper in supporting civil defense (McEnaney, 2000 p. 3). In addressing this legislation, which was enacted more than half a century ago, Truman identified needs that still exist today and provided what could be the rationale for a proposed reconstruction model when he stated, it "affords the basic framework for preparations to minimize the effects of an attack on our civilian population, and to deal with the immediate emergency conditions which such an attack would create" (Truman, 1951, p. 1). However, execution of a proposed reconstruction system would not be successful should it be unilaterally delegated to a

state task rather than a federal responsibility. Certainly, some states with the financial resources may achieve success absent federal intervention. However, the disparate access to required resources, financial or otherwise, would hinder success for many other states. Uniformity of results and success requires a federally centralized response to what would be unique attacks occurring on American soil.

The decentralized civil defense system that was framed by the Federal Civil Defense Act of 1950 was supported by Congress in part because it did not encumber any significant financial burden to the federal government and because a similar model of civil defense employed in Britain during the Second World War was viewed as successful. The British model of civil defense during the war relied heavily upon local self-help efforts supported by centralized government training and policy recommendations (McEnaney, 2000, p. 24). Local communities were able to identify parochial needs and execute the broader applications of civil defense in alignment with their local needs. A correlative application Congress believed could be applied in the U.S. Additionally, support of local self-help was advanced in the U.S., as it was believed that it would minimize the public's expectation of government to respond, restore and rehabilitate should a successful attack occur (McEnaney, 2000, p. 24). The logic of this approach was two-fold; first, an honest recognition that should a nuclear attack occur, government had a limited ability to help all persons in such a catastrophic event and second, should people believe that government could respond to all needs, individual participation in civil defense measures might fall. A reconstruction model diverges from both points of view expressed by initial supporters of the FCDA. It remains essential for government on a federal level to insert itself in any reconstruction model. The expeditious coordination and availability of resources required to satisfy the legal and practical demands of reconstruction are realistically not available to all jurisdictions whether state or local. The economic financial hardships of state and local governments support this point. Also, rather than marginalizing public expectations, the benchmark for government response must be raised. The notion that interruption to daily routine will be limited should be a certainty in most cases. The public should be aware and have an

expectancy that normalcy will follow within a designated period of time, which is the crux of the resiliency value anticipated to be delivered with this model.

The evolution of civil defense in the decades that followed FCDA included not only response and preparedness to attacks from enemy states, but also those to natural disasters. Although this reorganization of the civil defense model towards an all hazards approach beginning in the 1970s would not appear to impact a reconstruction model in response to a terrorist attack, the outcomes that followed comprise the very foundation for a national policy for reconstruction. The Federal Disaster Assistance Agency provided resources to those impacted by a disaster, which could have included a natural one or a man-made one, akin to a terrorist attack. The practice by which government provides financial aid for the purpose of recovery is a necessity for an expeditious reconstruction recovery model. Otherwise, any financial impediment to recovery resulting in delay would simply negate the entire process for which timeliness is a prerequisite for success. The cumulative outcome of the emergence of all previous entities occurred in 1979, with the establishment of the Federal Emergency Management Agency, with an all hazards response to disasters manmade or natural. “In November 1994, the FCDA Act of 1950 was repealed” (DHS, 2006, p 23). The limitations that the FCDA imposed upon the federal government were invalidated, and FEMA assumed statutory authority to conduct exercises and prepare for all hazards events. The ability to incorporate a federal system for reconstruction became viable with the emergence of FEMA, where it was not with FCDA and remains true as of this writing.

The attention to maintaining the mental health of a population impacted by attack or fear of attack was recognized as early as 1916 by the U.S. government. During the Cold War period, it was also largely acknowledged that morale was as much a component to victory as what was accomplished by soldiers in the field (McEnaney, 2000, p. 31). McEnaney further states that the psychology of war was not only a strategy, but considered a factor to victory in the Cold War (McEnaney, 2000, p. 31). There is any number of means employed by governments to insulate the public psyche from fear, hysteria, or ongoing anguish due to an attack. Public education, preparedness exercises,

psychological intervention by professionals following a catastrophic event are among those practices designed to assuage the public's fear pre and post terrorist attack by the State of Israel, as well as other states. Additionally, the efforts to expeditiously erase any evidence of a successful attack are another exercise uniquely employed by Israel. The history of civil defense in the United States acknowledges the importance of maintaining public morale and the establishment of FEMA provides a framework by which a model, akin to reconstruction conducted by Israel, may be similarly accomplished in the U.S. should the need arise.



## **V. LEGAL AUTHORITY**

### **A. WAR POWERS ACT OF 1942**

The legal authority for a U.S. policy to repair sites damaged by terrorist strikes would have to satisfy two critical elements to support a national model of reconstruction. The government through the exercise of law would have to be empowered to take title to privately owned property and would have to allow for the coordinated deployment of state and federal military resources. Theoretically, the ability to expeditiously reconstruct a damaged site could occur either through the willful cooperation of impacted property owners or through the mandated direction of U.S. law and policy. The critical element to a reconstruction model is that repair efforts happen expeditiously. It would seem unreasonable and impractical to leave this responsibility to individual property owners who may have different priorities and abilities to satisfy the need. Consequently, it remains incumbent upon government to mandate and execute the tasks of rapid recovery. More so than natural disasters or nonterrorist related events, the urgency to rapidly repair a site damaged by a terrorist attack is all the more greater because a terror attack does not cease with an explosion. Until such time that the indicia of an attack is removed, the fear delivered with the attack continues to assault the targeted population.

Existing practices by first responders to emergency situations and conditions that allow for modification to criminal procedure law under exigent circumstances should similarly be applied for the purposes of reconstruction. Mental health laws routinely allow police to temporarily take a person in custody for medical evaluation, if there is a perceived threat to them or others, without a corresponding court order or without the person's willful consent. Likewise, courts have upheld the right of police to suspend the Fourth Amendment requirement to obtain a search warrant when in immediate flight of a party entering a premise. Jurisprudence has long recognized that in times of emergency practicality should prevail over form when safety is concerned. In most instances, strict application of law should never override an immediate emergent need to public safety that would otherwise be hindered by delay. An effort to engage in rapid reconstruction

would necessitate modification and/or suspension of customary legal practices to meet the goal in a timely manner. National security and public safety concurrently validate a rationale for those modifications to existing laws that would allow for a national reconstruction model.

The practice of government dictating actions required of property owners is not uncommon. Some of these regulations are safety related, whereas, others are not. On a municipal level, town, villages and cities routinely have incorporated into their local ordinances requirements of landowners to maintain benchmark aesthetic standards. These requirements are not related to public health or safety but are narrowly directed at the visual curb appeal of private property in the context of a neighborhood. Likewise, FEMA requires of government backed mortgage holders in flood zones to have specific flood insurance beyond typical coverage. Similarly, construction standards and requirements are reminders that although private property may be owned, it may not be necessarily privately managed at the sole discretion of the property owner. Property owners remain beholden to government standards and regulations. Imposition of a mandated reconstruction standard would not be a deviation from similar government applications already in place.

The recommendation to mandate reconstruction would fall to the role of the federal government, as there is a relatable nexus to national security to this undertaking. In order for government to initiate mandatory reconstruction, the process would require government to temporarily suspend the rights of an affected property owner. In doing so, government could then make the unilateral decisions required to repair and recover a damaged site. Although compulsory government actions of this kind are the antithesis of American ideology as they relate to individual rights, they are not without precedent. The Second Wars Powers Act of 1942 was enacted in response to the Second World War (USWPA, 1942). Among other things, the Second War Powers act allowed the U.S. government to condemn privately held property for the purpose of co-opting that same private property for military purposes. Due compensation was awarded to property owners and opportunities to contest financial terms could be and were litigated. The

government's use/ownership of the property was for a temporary period and subsequently returned to the original owners upon the conclusion of the governments need for the property. An exception was made to individual rights to serve the greater needs of the nation. Notably, these changes were made through legislative fiat rather than through Constitutional amendments. An adaptation of this kind that is of a temporal nature and in response to emergencies conditions and need may be considered an 'exceptional solution' that would not require a Constitutional amendment to abridge individual rights. An exceptional solution is not a legal determination but rather a concept that has been previously adopted by government. A similar application may be made to the proposal of reconstruction. Government could essentially condemn property for the purpose of reconstruction. Upon conclusion of reconstituting a damaged site, the property would be returned whole to its original owners. In this instance, the greater need to maintain and restore resiliency outweighs the need of individual property owners and the temporary suspension of ownership rights would be an exceptional solution to the emergency at hand.

## **B. EMINENT DOMAIN**

A concurrent legal avenue that may support a national reconstruction model are the laws of eminent domain. Eminent domain, which was the foundation for the Second War Powers Act authority to seize property, addresses the right of government to relieve title of private property from owners and transfer it to government (Meidinger, 1980). Eminent domain may, however, be applied at any time and not only during a time of conflict. Eminent domain actions by government date as far back as the Roman Empire (Meidinger, 1980). The roadways and aqueducts that transverse ancient Rome required that individual property owner's surrender individual rights for the benefit of the empire. Likewise, in eighteenth century England the power and prerogatives of the King allowed for encroachment upon privately held property. The first record of eminent domain in what would become the U.S. was recorded in 1639 in colonial Massachusetts, employed for the purpose of building roads (Malamut, 2000). One historical perspective of eminent domain supports the practice with the proposition that all land was first held by the

sovereign prior to private ownership, thereby, allowing the sovereign to reclaim it should a need arise (Meidinger, 1980). What differentiates modern eminent domain actions in the U.S. are the requirements for fair compensation to owners as delineated in the Fifth Amendment of the U.S. Constitution, a defined public benefit for the land and the right to due process to contest an action by government.

## **1. Public Benefit**

Typically, government has exercised eminent domain for utilitarian purposes, such as the construction of roadways, railways, to support urban development and public housing, and the like. Seizing property under eminent domain is not designed to revert ownership back to the original owners, as recommended in a reconstruction model. This recommended departure from past practices would require a retooling of existing eminent domain laws to be tailored to the needs of the model.

Existing case law on the subject of eminent domain is supportive of the theory that supports reconstruction. The objective goal of reconstruction is not the task of rebuilding damaged facades and replacing broken glass but rather supporting a nations' resiliency in the face of a terrorist attack. The landmark *New York City Housing Authority v. Miller* 1936 decision in which slum housing was condemned to facilitate the construction of public housing is indicative that an intangible goal may support a claim of eminent domain. The court in that decision found that the public benefit was the purported reduction in crime and juvenile delinquency that was anticipated to follow with improved housing conditions. A similar application of a broad public benefits analysis was taken years later with the construction of the World Trade Center site in New York City where the asserted public benefit was to improve commerce and traffic (O'Donnell, 1964). In both of these cases, eminent domain claims were successfully pursued by advocating for a public benefit that was linked yet detached from the construction that followed. Efforts to support an intangible national resiliency through the reconstruction of damaged property mirrors earlier applications of eminent domain supported by the courts.

Case law, however, is abundant in supporting or denying positions with nuanced interpretations of the law. In the case of *Boston & Roxbury Mill Corp. v. Newman*, 29 Mass. 467,481(12 Pick. 68.70) (1832), the court reinforced the protection of seizing private property when eminent domain is applied only for ‘ornamental’ purposes to improve aesthetics. Absent a public use or benefit, there were no arguable reasons to deprive a private property owner to the right of his property. In the instance of reconstruction, an eminent domain application could readily assert the underlying reasons for seizure, which overshadow an aesthetic gain to the effort. The argument that must be made for reconstruction is that although the outcome will yield an aesthetic improvement, the intentional is to yield improved resiliency that could be a national casualty in a terror attack. However, government has successfully employed eminent domain to seize ‘scenic easements’ to protect natural beautifications. The outcome of these decisions, as with those noted earlier, is that intangible yields provide latitude to make similar applications for reconstruction.

A formative argument for mandating eminent like domain laws in a reconstruction model is the ability to overcome the ‘hold-out-problem’ of persons who would not willfully cooperate with reconstruction efforts. It remains the most common justification for modern day eminent domain applications as an individual or organization essentially holds a larger project hostage to their individual terms and or whims (Meidinger, 1980, p. 49). The element of eminent domain that should provide some pause in the deliberation is the ability to arbitrarily deprive or overstep individuals of constitutionally protected rights. Rather than seizing ownership of privately held property, the better framework to consider the model is a temporary suspension of ownership that is later reinstated.

## **2. Compensation**

Compensation is a constitutionally guaranteed element of eminent domain, protected under the Takings Clause of the Fifth Amendment, which states that no person shall, “be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation” (USC, 1787). “The

Takings Clause found its genesis in Section 39 of the Magna Carta, which declared that land would not be taken without some form of due process: "No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land" (Magna, translated 1297). However, if property were to be seized under the auspices of reconstruction, the seizure would be temporary and the property returned in an improved state. Consequently, it may be argued that compensation for these purposes is negligible and not a component that would impact a national reconstruction model. Should the seizure and reconstruction extend for a protracted period of time, then compensation must be a consideration.

### **C. STAFFORD ACT**

Once a reconstruction model rests upon legal standing to act, it then requires operatives to initiate the undertaking. The actual process of reconstruction requires the clearing and removing of debris, in some instances an engineering assessment of building's integrity, and the actual trades required to refurbish the damaged scene, which may include electrical, plumbing and carpentry craftsmen among others. Always contingent upon scope and scale, the number of required persons required to be assembled to facilitate this task will change. Consequently, the uncertainty of the magnitude of any event limits the ability to have a pool of persons on standby and at the ready. Additionally, geographical considerations as to where an event might occur further burden the ability to assemble these groups of people to rapidly repair a site.

The solution is certainly not by employing first responders for this task. Nationally the average number of sworn members in a police department is thirty-five (35) (USDOJ, 2003). First responders, whether police or firemen are not necessarily equipped or trained for this purpose, and their obligations and responsibilities lie elsewhere. If the goal of reconstruction is expeditious repair, a coordinated response will require any number of skilled trades and resources including heavy machinery to collect and dispose of debris and effect the necessary repairs. FEMA resources might be readily

assembled at a site but not necessarily within the required timeframe to effect a visual correction in the prescribed timeframe.

In the event of a major disaster, which a terrorist attack should be included among, the President of the United States may declare an emergency that allows for a number of federal resources to be made available. The Stafford Act specifically addresses the mechanism by which federal assets may be deployed to assist with state efforts and is applicable to a reconstruction model (Bazen, 2005). In order to trigger a presidential declaration, a Governor of an affected state would first have to make a request of the President. The benchmark that must be met to forward this request is that the magnitude of the event is greater than the ability of the state to address it alone. The request delivered to the FEMA Regional Director and follows a prescribed chain of command ultimately deliverable to the President. In the instances a reconstruction effort, this same process may be observed but with the acknowledgement that timeliness is the goal, and codification for reconstruction purposes should include an accelerated approval process within an hour's time from the time of incident.

A consideration of a Governor's request for disaster assistance under the Stafford Act must include,

1. Estimated cost of assistance
2. Localized impacts
3. Insurance coverage in force
4. Hazard mitigation
5. Recent multiple disasters
6. Programs of federal assistance. (Bazen, p. 5, 2005)

In each of the categories, a reconstruction model would readily satisfy the prerequisites of the Stafford Act. Insurance carriers would largely absorb the estimated cost of assistance for reconstruction at a later date following a customary claims process. Those nonrecoverable costs to government would include the collection and disposal of

debris to and upon public property. The Stafford Act addresses among other things, debris removal, and reconstruction to private and publicly owned property both keystone elements to a reconstruction model. Additionally, FEMA may deploy needed assets to assist in the recovery. What the act does not require or address is the timeliness of recovery. Codification and mandatory actions to satisfy a speedy recovery would be required. New York City, in coordination with FEMA, instituted a Rapid Repairs Program to rebuild damaged homes affected by Hurricane Sandy (NYC, 2013). The NYC rapid repairs program did not, nor was it, intended to occur within the immediate hours or days following the disaster. However, the program modeled the ability to coordinate an accelerated rebuilding program utilizing state and federal resources. A similar application may follow a terrorist reconstruction model with the deviation being an exponentially accelerated schedule.

The legal statutes provide the authority to initiate reconstruction. The Stafford Act allows for federal assistance and for federal agencies and correlative resources to be deployed. The last measure required is the personnel to execute the actual labor of reconstruction. Employing the National Guard for this purpose overcomes any number of otherwise obstacles. Each state has a standing National Guard. Within the National Guard are any number of core skills that may be applicable for reconstruction, as well as the ability to utilize heavy equipment as needed.



## **VI. CONCLUSIONS**

### **A. ISRAELI EXPOSE TO TERRORISM**

The account of David Abargail, a cashier in a convenience store in Jerusalem, best encapsulates the Israeli response and mentality to domestic terrorist attacks. As part of the Second Intifada campaign against Israel, in December of 2001, three coordinated bombings, which included two suicides bombings and a related car bombing, exploded in Jerusalem. Eleven victims were killed and more than 180 additional people were injured in the attacks (ADL, 2011). The scope and damage of the attacks were significant. Abargail recounts that following the attacks, a victim entered his store bleeding profusely leaving pools of blood on the floor of the store that later required him to use a squeegee to clean up. Yet, only three hours later Abargail was open again for business returning to the routine and redefined normalcy of Jerusalem (Curtius, 2001). Abargail was not alone in returning to business as normal. Natan Katz, another business owner commented that, “If we stop, they (the terrorists) achieve their goal” which underscores the sentiment of the Israeli philosophy of reconstructing scenes damaged by acts of terrorism (Curtius, 2001). To the point of Natan Katz, neither business nor the habits of ordinary life can stop. Additionally, and perhaps more critically, the health of the conscious state of the affected population may rebound quicker with a return to normalcy. Reconstruction rather than left to individual responsibility is incorporated into a governmental response to terrorism. This distinction is the keystone to the proposals contained herein.

Brigadier General Yeshayahu Horowitz, the Director of Community Policing with the Ministry of Public Security in Israel, succinctly encapsulated Israeli resiliency and the rationale for reconstruction stating, “The show must go on” (Horwitz, 2013).

### **B. EPILOGUE AND RECOMMENDATIONS**

Terrorism is not a new concept or strategy, but rather an age-old tactical approach employed by independent actors or supported by state governments that gives voice to a minority population with the delivery of fear through the threat or actual execution of

violent acts. Bombings, killings, kidnappings and other violent acts are the means by which terrorism is advanced. The goal of the terrorist is not so much to blow something up, as it is to induce a level of fear that will prompt a desired result. To that end, the vast majority of anti-terrorism efforts are directed at intercepting would be terrorist actors, interrupting the physical sequences leading to violent acts and employing predictive measures to impede future successes. These efforts are designed to minimize fear by supplanting it with a sense of security with the interruption of terrorist acts. Intuitively, actions designed to abate terrorism should precede a terrorist event. A successful attack is indicative of a failure in some measure of a counter-terrorism strategy. However, although a successful attack may indeed mark a counter-terrorism failure, it remains an opportunity to be leveraged against future attacks.

The practice of the Israeli government to expeditiously repair and reconstitute a scene damaged by a domestic bombing is a critical piece of their overall counter-terrorism strategy. Rather than serving as a cosmetic response to repair a damaged scene, the practice is among other things, designed to mitigate any lasting evidence that a terrorist attack took place. On a very elementary level, it is akin to practices employed by local municipalities in the United States to promptly overwrite graffiti when it is discovered. Removing the evidence of damage, whether graffiti scrawled across a government building or the remnants of a bombed café, the results are similar in that the visual victory for the offender is taken away. James Wilson and George Kelling introduced in the 1980s what many consider a cornerstone of modern policing theory. Augmenting an earlier social theory expressed by Phillip Zimbardo, they espoused the notion of the ‘broken windows theory,’ which stipulates that disorder follows in social environments where physical disrepair is left unattended, which then manifests itself in increased criminal activity (Wilson & Kelling, 1982, p. 3). The theory and its application reflect that changing the visual landscape impacts future outcomes, the very goal of the Israeli model of reconstruction. The NYPD also employs visual stimuli in its counter-terrorism strategy with the deployment of Operation Hercules (Horowitz, 2003). Operation Hercules deploys heavily armored and highly visible law enforcement personnel in high visibility locations for the two-fold purpose of signaling to would be

terrorists of the NYPD presence and concurrently to the public to assuage fear. The strategy similarly supports that altering the visual landscape impacts future events.

Acknowledging that terrorism is a criminal act, Wilson's broken windows theory may apply to those scenes damaged by terrorists. The timeliness of the repair is critical. Each month, day or hour, a damaged building, shopping mall or café is left in disrepair; the scorched and battered artifacts of the blast serve as a victory flag in the sand for terrorists. Damaged property and disruption to daily life serve as monuments and living testimony to terrorists' success, whereas reconstruction of a damaged scene and return to normalcy deprive terrorists of a lasting visual victory.

Policies employed by law enforcement in the United States in response to bombing incidents are universally driven by a first responder mentality to aid the injured, secure the scene and collect evidence related to a criminal investigation framed within the context of the National Incident Management System (FEMA, 2011). First responders, other than law enforcement, firefighters or EMS, are similarly driven to contain a scene and/or aid the injured. Absent from the United States approach is any element to sustain resiliency and expeditiously diminish the markings of an attack. Essentially, within the United States, there is no accepted plan or strategy to address resiliency other than the governmental response as noted. However, Israel, which has a significant history of domestic terrorist attacks, in addition to preventative measures, has in place protocols to address an impacted scene and persons with the purposeful design to restore normalcy and visibly erase the signs of the terrorist act. The clean up that follows a successful terrorist attack engages a number of governmental and private entities.

Homeland security officials have restated on multiple occasions that regardless of best efforts to prevent an attack, terrorist acts occurring on domestic soil are inevitable. Employing a strategy to restore normalcy to a targeted scene within the United States would require legislative action and a fundamental change to how law enforcement responds to such scenes. Practical considerations to restoring the facades of damaged edifices and other structures might be readily accomplished through legislative efforts allowing a government entity to declare an emergency crisis allowing for such repairs to

private property. Likewise, support services, whether psychological or more fundamental like the need for shelter, are currently available through existing governmental agencies. Forming multi-jurisdictional teams for expeditious reconstruction purposes should be established. The greater challenge would be to have law enforcement expedite the processing of a crime scene in order for reconstruction to follow. A scene would have to be promptly evaluated and canvassed for evidence without delay with the recognition that the time to collect evidence is not open-ended. This would certainly impact evidentiary rules for later prosecutions and may require legislative action to define acceptable parameters for best practices for the collection of evidence in a limited time period.

There are inherent limitations to drawing parallels between the Israeli experience and applying them in the U.S. However, the Israeli model is of particular value to study for the U.S. as is framed within a democratic process and the credibility of their counter-terrorism measures rest upon decades of experience. Measuring effectiveness of the Israeli model, as is true of most counter-terrorism measures, is problematic as there is no convincing scientific evidence to determine when prevention was effective (Weisburd, 2009). The 2010 *Quadrennial Homeland Security Review* report succinctly addresses the need;

...despite our best efforts attacks, some attacks, accidents and disasters will occur. Therefore, the challenge is to foster a society that is robust, adaptable, and has the capacity for rapid recovery. In these context individuals, families and communities-and the systems that sustain them-must be informed, trained, and materially and psychologically prepared to withstand disruption, absorb or tolerate disturbance, know their role in a crisis, adapt to changing conditions, and grow stronger over time. (p. 15)

The outlines found herein provide a framework for adopting in the United States the best practices executed by the Israeli government in response to reconstruction following a terrorist attack.

The framework for a U.S. reconstruction model may be assembled with the implementation of the following five critical points:

- 1) Legislatively mandate a requirement for privately owned property to be reconstructed in a prescribed timely manner. Owners may not opt out of the process. The objective goal of a U.S. model would be to do so within twenty-four (24) hours.
- 2) Employing existing legal applications of eminent domain, temporary governmental condemnation of privately owned property or similar legal statutes, to allow the government to spearhead reconstruction efforts by taking temporary possession of the property. Some modification of these laws would be required to satisfy timelines issues. Following reconstruction, within the prescribed time, the property would be returned to the owner of record.
- 3) Establish the administration, supported by legislation, which allows the government and owners to recover costs from insurance carriers for repairs conducted during reconstruction. A national surcharge to insurance premiums could be mandated to maintain a working balance of funds for this purpose.
- 4) Utilize National Guard units to clean up and repair sites damaged by a terrorist attack. Employ NIMS to coordinate National Guard units with other disaster response and recovery systems, including but not limited to FEMA.
- 5) Enact legislation, supported by training and national standards, related to evidence collection for sites that would be identified for expeditious reconstruction.

Police innovation over the last three decades has been focused primarily on questions of crime and disorder, and community. However, since the 9/11 terrorist attack, the U.S. and other Western countries have been challenged by a new set of responsibilities for policing, which are likely to require changes in police strategies and organization. To date, there are few descriptions of possible policing models for such police responses to terrorism (Weisburd, 2009, p. 2).

Adding defenses and armaments to our national security need not come only from munitions and hardware, but may also be derived from tactically attacking and defending terrorisms prime deliverable; fear.

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